

When recorded, mail to:
City Clerk – City of Flagstaff
211 W. Aspen Avenue
Flagstaff, AZ 86001

PROMISSORY (NO INTEREST) NOTE

Principal Amount: **\$123,781.50**
Date: **As of January 6, 2015**

For value received, CDR Land Investors I, LLC, an Arizona limited liability company whose address is: 2700 N. Central Ave., Ninth Floor, Phoenix, AZ 85004 ("Borrower"), promises to pay to the order of the City of Flagstaff, an Arizona municipality, ("Lender"), in lawful money of the United States, the principal sum of One Hundred Twenty Three Thousand Seven Hundred Eighty One and 50/100 Dollars (\$123,781.50) without interest, payable as follows:

1. Security for Note. This Note will be secured by a Deed of Trust on certain real property located in Coconino County, Arizona and described in Exhibit "A" to the Deed of Trust (the "Property") which may be recorded by the City in the event that CDRI does not pay the principal amount of this Note within thirty (30) days of the effective date of the last adopted Entitlement Document.
2. Settlement and Release Agreement. Borrower and Lender are parties to that certain Settlement and Release Agreement dated May 9, 2013 (the "Agreement") and to that certain Amendment to Settlement and Release Agreement dated as of January 6, 2015 (the "Amendment"). The Agreement as amended by the Amendment is collectively referred to herein as the ("Settlement Agreement"). All capitalized terms used herein and not specifically defined shall have the meanings ascribed to such terms in the Settlement Agreement. The principal amount of this Note is based upon the remaining outstanding amount of the Butler Avenue assessment at issue in the Maricopa County Action.
3. Terms of Repayment; Duration. The principal amount of this Note shall be due and payable in full thirty (30) days following the the effective date of the last adopted Entitlement Document. If the City Council does not achieve Final Approval of the Entitlements after a hearing before City Council, then this Note and the Deed of Trust shall be terminated and deemed null and void and of no further force or effect, and the parties shall resolve the dispute regarding the Butler Avenue assessemnt through the re-activation of the Maricopa County Action. If CDRI determines that the Entitlement Applications have not been or will not be timely reviewed and processed by City Staff and/or will not be heard by the Planning

Commission and City Council within the spirit of paragraph 6 of the Amendment, then CDRI may elect to defer pursuit of the Entitlements and re-activate the Maricopa County Action whereby, upon re-activation of such Action, this Note and the Deed of Trust securing this Note shall be terminated and deemed null and void and of no further force or effect, and the parties shall resolve the dispute regarding the Butler Avenue assessemnt through the re-activation of the Maricopa County Action.

5. Prepayment and Controlling Law. This Note can be prepaid in whole or in part at any time without prepayment penalty. This Note shall be governed and construed in accordance with the laws of the State of Arizona, except to the extent that such laws are preempted by Federal law or regulation, in which case such Federal law or regulation shall govern.

6. No Release or Waiver; Payment of Costs. Borrower hereby agrees:

6.1 That no extensions and renewals of this Note, from time to time, without notice, shall constitute or be deemed a release of any obligation of any of the Borrower to Lender;

6.2 That the acceptance by Lender of any performance which does not comply strictly with the terms of this Note shall not be deemed to be a waiver or bar of any right of Lender, nor a release of any obligation of the Borrower to Lender;

6.3 That Borrower will pay Lender, without demand, any and all costs, expenses and fees incurred before, after, or irrespective of whether suit is commenced if action is required by the Lender to enforce this Note.

6.4 For purposes of this Note, costs and expenses payable under the Deed of Trust or incurred as a result of filing by or against the Borrower (or any said surety or guarantor) of any proceeding under any chapter of the Bankruptcy Code, or any similar state or Federal law relating to Bankruptcy, insolvency or receivership shall be borne by Borrower as permitted under applicable law. In the event suit is brought to enforce payment of this Note, such costs, expenses and fees and all other issues in such suit shall be payable by Borrower as permitted under applicable law.

7. Default. Should default be made in the payment of principal, as above provided, or other default occur in the performance of or compliance with any of the covenants or condition of said Deed of Trust, then in any such event Lender may, in addition to such other remedies or combination of remedies Lender may have under law and equity, exercise its remedy of non-judicial sale by the trustee in accordance with the Arizona Deed of Trust Act and the Deed of Trust; provided, in the event Lender elects to exercise the power of sale by the trustee, in order to reinstate the Deed of Trust, the Borrower need only pay the amount of his default under this Note.

8. Obligations are Joint and Several. Should this Note be signed by more than one person, all of the obligations herein contained shall be the joint and several obligations of each signer hereof.

9. Amendments. This Note may not be changed orally, but by on agreement in writing and signed by the duly authorized representative of the party against whom enforcement of any waiver, change, modification of discharge is sought.

10. No Deficiency Judgment. THIS NOTE IS A NON RECOURSE NOTE, SO THAT IN THE EVENT OF ANY DEFAULT, THE LENDER'S SOLE REMEDY SHALL BE TO ENFORCE THE DEED OF TRUST AND REALIZE ON THE SECURITY THROUGH JUDICIAL FORECLOSURE, POWER OF SALE, OR OTHER LAWFUL MEANS OF ENFORCING AGAINST THE SECURITY. HOWEVER, NO DEFICIENCY JUDGMENT SHALL BE TAKEN AGAINST BORROWER.

CDR LAND INVESTORS I, LLC

By: _____
Its Authorized Representative

Date